



Memorandum

TO: PLANNING COMMISSION

FROM: JOSEPH HORWEDEL

SUBJECT: SEE BELOW

DATE: November 1, 2006

COUNCIL DISTRICT: 5, 7 & 8

**SNI AREA: West Evergreen,
KONA, and
East Valley/680**

SUBJECT: FINAL ENVIRONMENTAL IMPACT REPORT (FEIR) FOR THE EVERGREEN•EAST HILLS VISION STRATEGY for an update to the Evergreen Development Policy, a Funding Agreement (considered by City Council), General Plan Land Use/Transportation Diagram and Text Amendments, and future Planned Development Rezoning on approximately 542 acres to allow between 3,600 and 5,700 dwelling units, up to 500,000 square feet of commercial, up to 75,000 square feet of office, up to 4.66 million square feet of campus industrial, and various transportation improvements and community amenities within the EEHVS area.
(SCH # 2005102007).

BACKGROUND

I. Draft EIR

The Draft EIR has been prepared to evaluate the environmental impacts of the proposed project description listed above. The California Environmental Quality Act (CEQA) requires the preparation of an EIR when “there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment” (CEQA Guidelines Section 15064).

A. CEQA Requirements for Certification of an EIR

The California Environmental Quality Act (CEQA) Guidelines 15090 require, prior to approving a project, the lead agency to certify that (1) the Final EIR has been completed in compliance with CEQA, (2) the final EIR was presented to the decision-making body of the lead agency and the decision-making body reviewed and considered the information contained in the Final EIR before approving the project, and (3) the Final EIR reflects the independent judgement and analysis of the

lead agency. When an EIR is certified by a non-elected decision-making body with the local lead agency, that certification may be appealed to the local lead agency's elected decision-making body.

B. San Jose Municipal Code Chapter 21.07 Requirements for Certification of an EIR

The City of San Jose is the lead agency for the Evergreen•East Hills Vision Strategy Final EIR as defined by CEQA. San Jose Municipal Code Chapter 21.07 designates the Planning Commission as the decision-making body for certification of EIRs. The Planning Commission must hold a noticed public hearing to certify the Final EIR. Upon conclusion of its certification hearing, the Planning Commission may find that the Final EIR is completed in compliance with CEQA.

If the Planning Commission certifies the Final EIR, it may then immediately act or make recommendations on the project associated with the EIR. No action or recommendation by the Planning Commission may be deemed final until after the appeal period has expired. If the Planning Commission does not certify the EIR, it may not take action or make any recommendation with regard to the project. A Final EIR, which is revised at the direction of the Planning Commission, shall require another noticed public hearing.

Any person may file a written appeal of the Planning Commission's certification of the Final EIR with the Director of Planning, Building and Code Enforcement no later than 5:00 p.m. on the **third business day** following the certification of the Final EIR. The appeal must state the specific reasons that the Final EIR should not be found to be completed in compliance with CEQA. No appeal will be considered unless it is based on issues that were raised at the public hearing either orally or in writing prior to the public hearing. Upon receipt of a timely appeal, filed on the appropriate form and accompanied by filing fees, the Director shall schedule a noticed public hearing on the appeal of the Commission's certification of the Final EIR before the City Council. In this specific case, if the Planning Commission certifies the EIR on November 8, 2006, the EIR appeal period would expire November 13 at 5:00 p.m., and the appeal is scheduled to be heard by City Council December 5, 2006.

ANALYSIS

II. Preparation and Review of an EIR and Agency Decision Making

A. Notice of Preparation

On September 29, 2005, the Director of Planning, Building and Code Enforcement sent a Notice of Preparation (NOP) to the State Clearinghouse, interested parties, and Responsible and Trustee Agencies as required by CEQA Guidelines Section 15082. The NOP contains a project description, project location, and probable environmental effects of the project. It is intended to solicit participation in determining the scope of the EIR. The NOP and responses to the NOP are contained in Appendix C of the Draft EIR. The Draft EIR may be circulated after the recipients have had 30 days to review the NOP.

B. Contents of the Draft EIR

The Draft EIR contains the contents required by Pub. Res. Code sec. 21002.1 and CEQA Guidelines 15143. The required contents include (1) a table of contents, (2) executive summary, (3) project description, (4) environmental setting, significant environmental impacts of the project, and mitigation measures, (5) cumulative impacts, (6) alternatives to the proposed project including the No Project Alternative and identification of an environmentally superior alternative, (7) growth inducing impacts, and (8) Significant unavoidable adverse impacts.

Page S-5 of the Draft EIR contains a summary of the potentially significant environmental impacts. It identifies as “Less-than-Significant with Mitigation” certain environmental impacts regarding: Transportation & Traffic; Noise; Air Quality; Cultural Resources; Biological Resources; Geology; Hydrology & Water Quality; Hazards & Hazardous Materials; and, Visual & Aesthetics. “Less Than Significant with Mitigation” means the impacts of the proposed project will not exceed the significance thresholds contained in the EIR with changes included in the project.

The Draft EIR identifies as “Significant Unavoidable Impact” certain impacts related to: Conflict with a Land Use Plan; Transportation & Traffic; Noise; Air Quality; Biological Resources; Visual & Aesthetics; Energy; and Jobs/Housing Balance. Significant cumulative impacts are disclosed to Transportation & Traffic; Noise, Air Quality; Biological Resources; Visual & Aesthetics; and, Energy. The Draft EIR also identifies that “Unless Mitigation is Determined to be Feasible & Made a Condition of Approval, Impact will be Significant & Unavoidable” for certain project impacts related to Biological Resources and Energy. “Unavoidable Significant Impact” means that impacts of the project would be exceed the significance thresholds even with changes or mitigation included in the project.

C. Lead Agency Responsibilities

The City of San Jose as the Lead Agency prepared the Draft EIR with the assistance of consultants and subconsultants. City staff with expertise in various topic areas reviewed the Administrative Draft EIR to exercise their independent judgment and analysis concerning the scope, content, and general adequacy of the EIR. CEQA requires that, no matter who prepares the Draft EIR, the EIR must reflect the Lead Agency’s independent judgement and analysis regarding the scope, content, and adequacy. The Lead Agency is responsible for the objectivity of the Draft EIR. At the time of EIR certification, the Planning Commission, or City Council on appeal, must make a specific written finding that the EIR reflects the independent judgement and analysis of the City of San Jose.

D. Public Notice and Review of a Draft EIR

On February 3, 2006, the Director of Planning, Building and Code Enforcement caused a Notice of Availability (NOA) to be published in the San Jose Mercury News, posted for review with the County Clerk, mailed to approximately 6,500 Evergreen•East Hills owners/occupants, sent to approximately 360 subscribers on the Evergreen•East Hills Vision Strategy (EEHVS) e-mail distribution list, and posted on the EEHVS website.

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As required by Pub. Res. Code secs. 21092(b), 21092.6; CEQA Guidelines secs. 15087, 15105, the NOA contains (1) a project description and location, (2) identification of significant environmental impacts, (3) specification of the review period, (4) identification of the public hearing date, time, and place, (5) information about where the Draft EIR is available, (6) and whether the project site is a listed toxic site.

The Director filed a Notice of Completion (NOC) with the State Clearinghouse to coordinate the systematic review of the Draft EIR with State Agencies such as the Department of Transportation. CEQA requires State Clearinghouse review of an EIR when a project, such as the Evergreen•East Hills Vision Strategy, is of “statewide, regional, or area significance”.

The Draft EIR was circulated for public review for 45 days, beginning on February 3, 2006 and ending on March 20, 2006, as required by Pub. Res. Code sec. 21091 and CEQA Guidelines 15087 and 15105. The Draft EIR was available for review in the Department of Planning, Building and Code Enforcement, at the Martin Luther King Junior Main Library and four local branch libraries within or adjacent to the project area, and online on the Department’s website. In addition, the Draft EIR was mailed to Federal and State Agencies, Regional and Local Agencies, and private organizations and individuals listed in Section I of the First Amendment to the Draft EIR.

On March 14, 2006 a public meeting on the Draft EIR was held at 7:00 p.m. in the San Jose City Council Chambers. Approximately 30 members of the public attended the meeting. The meeting included a presentation by City staff and the EIR preparers on 1) an overview of the EEHVS, 2) an overview of the CEQA process, and 3) the main findings contained in the Draft EIR. Following the presentation, members of the public had the opportunity to ask questions. Such questions, which were submitted on comment cards, were read aloud by the moderator. While City staff and the EIR preparers were able to provide answers to some questions at the meeting, full responses to all of the questions submitted at the meeting are provided in Section 4 of the EIR.

E. Preparation of a Final EIR

CEQA requires the Lead Agency to prepare a Final EIR responding to all environmental comments received on the Draft EIR during the public review period and to certify the Final EIR before approving the project. The responses to comments on a Draft EIR must include good faith, well-reasoned responses to all comments received on the Draft EIR. In responding to comments, CEQA does not require a Lead Agency to conduct every test or perform all research, study, or experimentation recommended or demanded by commentors. CEQA only requires a Lead Agency to respond to significant environmental issues and does not need to provide all information requested by reviewers as long as a good faith effort at full disclosure is made in the EIR.

The City’s responses to comments on the Draft EIR are contained in the First Amendment to the Draft Environmental Impact Report. The First Amendment and the Draft EIR constitute the Final EIR. As required by CEQA, the First Amendment contains (1) a list of persons, agencies,

and organizations commenting on the Draft EIR, (2) copies of comments received during the public review period of the Draft EIR, (3) the City's responses to those comments. On August 18, 2006, at least ten days prior to certifying the Final EIR in conformance with CEQA Guidelines Section 15089(b), the City provided a copy of its responses to each public agency and organization that submitted comments

Sixty-four (64) written comments were received on the Draft EIR. The First Amendment contains responses to comments from agencies such as California Department of Transportation (Caltrans), County of Santa Clara, and the Santa Clara Valley Transportation. The First Amendment also contains text amendments to reflect changes to the text made in response to comments received on the Draft EIR.

Comments received from the various reviewing agencies, organizations, and individuals primarily focused on discussion of the project's impacts and mitigation in the areas of traffic, impact on local schools, concern over which community amenities would be funded by the EEHVS, concern that additional development would degrade quality of life, whether or not to reverse the City's 1980 decision to designate over 300 acres in Evergreen for future jobs, loss of open space, and compatibility with existing neighborhoods. Detailed discussion can be found in the First Amendment. A summary discussion of the primary comments received regarding traffic is provided below.

Traffic. The primary environmental issues raised by Evergreen•East Hills area residents and community leaders during the EEHVS process have been traffic-related concerns. Specifically, there is substantial controversy over whether or not to revise the Evergreen Development Policy to allow more traffic into what many view is already a traffic-impacted and congested area. There has also been debate as to whether the roadway improvements proposed as part of the EEHVS will be adequate to offset the impacts of additional development.

Commensurate with a project of this magnitude, as part of the EIR, a comprehensive traffic study was completed that included analysis of 99 signalized intersections in and around the Evergreen•East Hills area. In addition, 18 directional freeway segments were studied on US 101, I-280, and I-680.

Vehicular traffic impacts were evaluated using the methodology adopted by the City and the Congestion Management Agency.

The Draft EIR disclosed all project development scenarios would result in significant unmitigated traffic impacts at up to six (6) signalized area intersections and up to 15 segments of the U.S. 101, I-280, and I-680 freeways. Tables 26 and 27 in the Draft EIR provide a summary of significant unmitigated impacts on signalized intersections and freeway segments.

F. Recirculation of a Draft EIR

As a general rule, EIRs are circulated once for public review and comment. If “significant new information” is added to the EIR after the close of the public review period on the Draft EIR but before certification of the Final EIR, the Lead Agency must provide a second public review period and recirculate the Draft EIR for comments. Under CEQA Guidelines 15088(b), recirculation is required when new significant information identifies:

- (1) a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;
- (2) a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance;
- (3) a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it; or
- (4) the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Recirculation of a Draft EIR is not required where the new information merely clarifies, amplifies, or makes minor modification to an adequate Draft EIR. Staff believes that none of the recirculation criteria have been met for the Final EIR. All new information that has been added to the Final EIR merely clarifies, amplifies, or makes minor modifications to the discussion and analysis in the Draft EIR.

G. Consideration of a Final EIR

A decision-making body is required to read and consider the information in an EIR before making a decision on the project. The City’s administrative record on the proposed project must show that the Lead Agency reviewed and considered the Final EIR before acting on the project.

H. Certification of a Final EIR

Before approving the project, the Planning Commission must certify that the Final EIR was prepared in compliance with CEQA and was presented to the Lead Agency’s decision-making body, which reviewed and considered the Final EIR before approving the project. In addition, the Planning Commission must certify that the EIR reflects the independent judgement and analysis of the City of San Jose.

I. Scenarios and Hybrid Proposals

The Evergreen•East Hills Vision Strategy EIR is a unique document in that it fully evaluated the environmental impacts of six different development scenarios. Discussions that have occurred through the Evergreen•East Hills Vision Strategy Task Force process have resulted in several hybrid proposals. Typically those hybrid proposals have focused on reducing the intensity of various components of the proposed developments and would therefore be covered by the EEHVS EIR scenario that evaluated the highest intensity of development. An example of a hybrid scenario would be retention of a portion of the Campus Industrial site and conversion of

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the balance to housing. Because conversion of the entire Campus Industrial site to residential would represent the worst-case development scenario, retention of any amount of industrial would be environmentally beneficial, due to trip internalization.


CONCLUSION

The Evergreen•East Hills Vision Strategy Final EIR meets the requirements of CEQA by disclosing the significant environmental effects of the project, identifying feasible ways to mitigate the significant effects, and describing reasonable alternatives to the project. The Final EIR complies with the substantive and procedural requirements of the CEQA guidelines for projects of regional significance. The Final EIR has been completed in compliance with the requirements of CEQA. It also represents the independent judgement and analysis of the City of San Jose.

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends the Planning Commission adopt a resolution to certify that:

1. The Planning Commission has read and considered the Final EIR;
2. The Final EIR has been completed in compliance with CEQA;
3. The Final EIR reflects the independent judgement and analysis of the City of San Jose; and
4. The Director of Planning, Building and Code Enforcement shall transmit copies of the Final EIR to the Applicant and to the decision-making body of the City of San Jose for the project.


for JOSEPH HORWEDEL, ACTING DIRECTOR
Planning, Building and Code Enforcement